

1 THE HONORABLE DAVID G. ESTUDILLO
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 MAVERICK GAMING LLC,

11 Plaintiff,

12 v.

13 UNITED STATES OF AMERICA, et al.,

14 Defendants.

15 No. 22-cv-05325 DGE

16 **PLAINTIFF'S RESPONSE TO
17 SHOALWATER BAY TRIBE'S NOTICE
18 OF SUPPLEMENTAL AUTHORITY IN
19 SUPPORT OF MOTION FOR LIMITED
20 INTERVENTION**

21 NOTED ON MOTION CALENDAR: August,
22 19, 2022

1 Plaintiff Maverick Gaming LLC (“Maverick”) respectfully submits this response to the
 2 Shoalwater Bay Tribe’s (“Tribe”) September 12, 2022 filing, which notifies the Court of the Ninth
 3 Circuit’s recent decision in *Klamath Irrigation District v. U.S. Bureau of Reclamation*, 2022 WL
 4 4101175 (9th Cir. Sept. 8, 2022). This case in no way changes the Ninth Circuit’s legal standards
 5 regarding Rule 19 and does not change the fact that the Tribe is not a “required party” under Rule
 6 19 because it is adequately represented by the Secretary of the Interior.

7 As Maverick previously explained, Dkt. 78, at 4–5, it is black-letter law that, given the
 8 federal government’s “trust responsibility” to Indian tribes, generally “Tribes are not necessary
 9 parties” if the federal government is a party because “[t]he United States can adequately represent
 10 an Indian tribe unless there exists a conflict of interest between the United States and the tribe.”
 11 *Washington v. Daley*, 173 F.3d 1158, 1167–68 (9th Cir. 1999); *Sw. Ctr. for Biological Diversity
 v. Babbitt*, 150 F.3d 1152, 1154 (9th Cir. 1998); *see also Dine Citizens Against Ruining Our Env’t
 v. BIA*, 932 F.3d 843, 855 (9th Cir. 2019) (concluding that federal government did not adequately
 13 represent tribal mine owner because its “overriding interest … must be in complying with
 14 environmental laws,” rather than approving continued mining operations).

15 *Klamath* is in perfect accord with these precedents. It found the federal government to be
 16 an inadequate representative of absent Indian tribes because of conflicts of interest with the tribes:
 17 “the Tribes are in active litigation over the degree to which Reclamation is willing to protect the
 18 Tribes’ interests in several species of fish,” and the government’s “primary interest” was not in
 19 defending the Tribes’ “reserved water and fishing rights” but in defending action “taken pursuant
 20 to the [Endangered Species Act] and APA.” *Klamath*, 2022 WL 4101175, at *7–8.

21 As Maverick has already noted, the Tribe has not shown any such conflict here; to the
 22 contrary, both the federal defendants and the Tribe share the identical position that the challenged
 23 state-tribal compacts are in accord with federal law and should continue in effect. Dkt. 78, at 6;
 24 *see* Dkt. 67-9, at 1.¹

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 26¹ Indeed, the Tribe’s own notice recognizes that its Rule 19 arguments can succeed only if the
 Ninth Circuit’s law regarding Rule 19 “evolve[s].” Dkt. 82, at 2.

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1 DATED September 19, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on this date I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which sends notification of the filing to all counsel of record.

DATED September 19, 2022.

/s/ Thomas M. Brennan

Thomas M. Brennan